

June 4, 2004

EX PARTE—VIA ELECTRONIC FILING

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

RE: Docket Nos. WC 03-211; WC 04-36; and CC Docket No. 95-116

The Minnesota Department of Commerce (MDOC), as the agency that represents the public interest before the Minnesota Public Utilities Commission, is currently participating in state proceedings regarding a number of rural telephone companies' requests to suspend local number portability to wireless carriers (WLNP).

MDOC appreciates the recent May 6, 2004 letter from the FCC's Consumer & Governmental Affairs Bureau Chief K. Dane Snowden, providing guidance to state commissions as they review and make decisions on petitions to suspend WLNP under Section 251(f) of the Telecommunications Act of 1996. The May 6<sup>th</sup> letter encourages commissions to "... ensure that carriers seeking waivers demonstrate they are on a path to compliance so that customers of these carriers will not be forever denied the rights their fellow consumers enjoy." MDOC intends to keep these principles in mind when it makes its recommendation(s) to the Minnesota Commission.

One issue that has been brought to MDOC's attention is that some wireline carriers are not providing WLNP, even though they have not requested nor received a suspension of WLNP requirements from any state commission. Specifically, at least one provider using Voice Over Internet Protocol (VOIP) believes it is exempt from the FCC's November 10, 2003 Order mandating WLNP. Attached to this letter is a copy of a web page from one provider using VOIP technology that specifically states that it will not port its phone numbers to wireless carriers, even upon a customer's request.

This refusal by a provider using VOIP technology to port numbers to a wireless carrier places state commissions in a difficult dilemma: if a state commission were to deny the petition of a rural telephone company to suspend WLNP, that rural telephone company would be required to expend the resources required to implement porting. Yet a provider using VOIP technology, who may very well be offering voice service in that rural telephone company's service area, would not. A provider that does not have to port numbers to wireless carriers, and who does not have to pay for this capability, has an economic advantage over its competitors – both wireline and wireless.

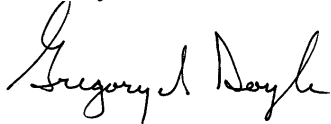
The FCC's Consumer & Governmental Affairs Bureau recognized in its May 6<sup>th</sup> letter that "... the ability of wireless and wireline consumers to port their numbers remains central to producing competition, choice, lower costs, and increased innovation." MDOC intends to review each WLNP suspension petition pending before the MPUC on its individual merits. However, MDOC's observation is that unless the FCC makes clear that all wireline carriers – regardless of technology – provide WLNP, the effect of the FCC's November 10, 2003 Order is diluted.

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For the above reasons, MDOC respectfully requests that the FCC consider WLNP obligations when it decides whether or not a VOIP provider is a telecommunications carrier. Further, the FCC should clarify, in its local number portability docket, whether its November 10, 2003 Order applies to all wireline carriers.

Pursuant to the FCC's rules, a copy of this letter is being included in each of the above-referenced dockets.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Doyle". The signature is written in a cursive, flowing style.

GREGORY J. DOYLE  
Manager, Telecommunications  
Minnesota Department of Commerce

GJD/MR/jl  
Attachment